

Pro Bono Practices and Opportunities in Greece

Excerpt from: A Survey of Pro Bono Practices and Opportunities in Selected Jurisdictions

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Greek legal order traces its origins to Roman law. The highest form of binding law in the Greek state is the Constitution. The present Constitution was adopted in 1975 and underwent minor changes in 1986 and 2001. Immediately below the Constitution are the laws adopted by the Parliament. The Parliament along with the President of the Republic have legislative power vested to them by the Constitution.

Under Article 43 of the Constitution, the President of the Republic, acting on the proposal of the competent Minister, issues the decrees necessary to implement the laws and may not suspend the implementation of laws or exempt anyone from their application. For the regulation of more specific matters, matters of local interest and matters of a technical or detailed nature, regulatory decrees may be issued on the basis of special authorization given by law, within the limits laid down in the authorization. Regulatory acts may be issued by other administrative bodies.

Under Article 1 of the Civil Code, “*the rules of law are contained in legal acts and customs.*” However, in the Greek legal system the role of custom as a source of law is negligible, if not non-existent.

Unlike the Anglo-Saxon system, court rulings do not constitute a source of law. The courts’ rulings are an important source of interpretation of existing laws.

I. *Legal Services and the Legal Profession in Greece*

The provision of legal services in Greece is subject to the Lawyers Code (*Κώδικας περί Δικηγόρων*), which regulates disciplinary law, fees and advancement in status in general. Lawyers in Greece must also comply with a Code of Conduct (*Κώδικας Δεοντολογίας*) and the rules of the bar associations (*Εσωτερικοί Κανονισμοί Δικηγορικών Συλλόγων*), which follow the provisions of the Code of Conduct for Lawyers in the European Union provided by the Council of Bars and Law Societies of the European Union (the “CCBE”). Lawyers are initially admitted to the courts of first instance, after which they practice in the courts of appeal and in the Supreme Court, depending on how long they have been in practice and the type of cases they accept.

Under Presidential Order 152/2000 aiming to facilitate on a permanent basis in Greece the practice of the profession of lawyer by individuals who obtained their qualification in another Member State of the EU (Directive 98/5/EC), lawyers who are nationals of EU Member States may practice on a permanent basis in Greece, in either a self-employed or a salaried capacity. They must have obtained their qualification in an EU Member State. In Greece, they must register with the bar association and keep chambers in the area in which they practice.

Lawyers whose application for registration is accepted are subject to the same obligations and have the same rights as Greek lawyers, but may only integrate fully into the legal profession in Greece once they can show that they have actually practiced their profession on a regular basis in Greece for three years. During these three years, lawyers wishing to represent a client in court must be assisted by a lawyer entitled to appear before the court hearing the case. Acts or duties which Greek law considers to constitute an exercise of public authority may be performed only by lawyers of Greek nationality. The profession may be pursued jointly by one or more lawyers practicing in Greece, under their professional title of origin, as members or associates of a grouping in the country of origin which has a branch or office in Greece.

Attorneys in Greece must at all times preserve absolute independence, comply with confidentiality rules, serve the clients' interests diligently, conscientiously and promptly; they cannot act in situations where a conflict of interest exists.

According to Article 175 of the Lawyers Code, it is prohibited for an attorney to provide legal services without receiving a fee, except if the client is a close relative to the attorney or can prove that he/she does not have the means to pay for the legal services provided.

Attorneys' fees are negotiated between the attorney and the client and cannot be lower than the minimum statutory fees set by a Joint Ministerial decision issued periodically. This minimum fee is collected in advance by the Bar Association from the attorney and is a prerequisite for representation before a Court of Justice. In the case of legal aid (see below), the beneficiaries are exempted from the advance deposition of fees. It is possible for an attorney to negotiate and receive a monthly salary for legal services provided to a client.

A. Legal Aid

According to Law no. 3226/2004, it is possible for citizens with lower income to receive legal services without paying fees. The attorney undertaking such a case is appointed on the basis of lists of attorneys put together and kept by local Bar Associations. The attorneys are included in these lists on their own initiative and if chosen, are obliged to provide their legal services without receiving fees. The Ministry of Justice will cover the legal fees owed to these attorneys and the amount will be the minimum statutory fee issued by the Ministerial decision (see above).

In parallel with the services provided by Law no. 3226/2004, articles 194-202 of the Code of Civil procedure and 100 and 304 of the Code of Penal Procedure provide respectively for the possibility of receiving legal aid in case of a trial.

In principle, the main costs of a trial have to be borne by the party who brings the action. The defeated party will be ordered to bear the costs of trial for both parties. Legal aid exempts the applicant from all legal costs, including judicial stamp duty, duty on the writ of execution, surcharges on these stamp duties, solicitor's and bailiff's fees, costs relating to witnesses and experts, and the fees of the barrister or other representative.

The following citizen categories are eligible for legal aid:

1. anyone (any national) who can show that payment of his legal costs is liable to deprive him and his family of the means necessary for their maintenance;
2. corporate bodies which are in the public interest or nonprofit-making and groups of persons which have the right to take part in court proceedings if it is shown that payment of the costs of the proceedings would make it difficult or impossible for them to accomplish their aims;
3. partnerships or associations if the partnership or association cannot pay the costs of proceedings and its members cannot do so without depriving themselves and their families of the means necessary for their maintenance;
4. foreign nationals provided there are reciprocal arrangements, and stateless persons on the same conditions as apply to Greek nationals.

Legal aid is available before all courts, civil, criminal and administrative, both for contentious and non-contentious proceedings. It does not cover, however, procedures before administrative authorities.

There is no special application form for requesting legal aid. Legal aid is requested from and granted by: (a) the district court, (b) the (single-judge) regional court or (c) the president of the full regional court in which the proceedings are to be instituted or are pending. In matters unrelated to a trial, legal aid is granted by the district court of the place of residence of the applicant. The applicant should submit the evidence justifying its application at least fifteen (15) days before the trial or the deed for which aid is requested. The competent authority appoints an attorney, who will represent the applicant, without the right to provide an objection to the representation.

Legal aid is available if, as a result of payment of the cost of the case, the applicant may not be able to maintain himself or his family. As evidence of his circumstances, the applicant must submit:

1. an attestation from the mayor or president of his municipality stating his financial and family circumstances and occupation, and certifying that he is unable to pay without risk to himself and his family; in the case of a non-profit-making corporate body, it must be shown that the accomplishment of its aims would be made impossible or difficult, and in the case of a partnership or association, that the partnership or association cannot pay the costs of proceedings and its members cannot do so without depriving themselves and their families of the means necessary for their maintenance;
2. an attestation from his local tax office certifying that in the previous three years the applicant has submitted an income-tax return and a return for any other tax due and that the returns have been checked by the tax office;
3. in the case of a foreign national, an attestation from the Ministry of Justice certifying that there are reciprocal arrangements.

The request for legal aid should be made to one of the courts referred to above in accordance with the criteria already outlined.

Legal aid may be withdrawn or restricted by the court, at the prosecutor's request or by its own motion, if the requirements for the granting of legal aid are not met or if the circumstances warranting legal aid no longer prevail or have changed. If the applicant succeeds in securing legal aid on the basis of false statements or information, the court will order the withdrawal of legal aid and will impose a fine, without prejudice to the obligation on the applicant to repay the sums received, and without prejudice to the possibility of criminal prosecution.

Furthermore, if the aided party loses the case, he will still have to pay some or all of the costs of the winning party as soon as his circumstances improve and have been verified.

B. Ombudsman

The Greek Ombudsman is a constitutionally sanctioned Independent Authority. It was founded in October 1998 and operates under the provisions of Law no. 3094/2003. The

Ombudsman provides its services to the public free of charge, and received more than 85,000 complaints.

The Greek Ombudsman investigates individual administrative actions or omissions or material actions taken by government departments or public services that infringe upon the personal rights or violate the legal interests of individuals or legal entities. Complaints can be submitted by every citizen, regardless of nationality, who has a problem with a Greek public service anywhere in Greece or abroad.

Before submitting a complaint to the Greek Ombudsman, the complainant should first come into contact with the public service involved with his or her case. Only if the problem is not resolved by the service concerned should a complaint be submitted to the Ombudsman.

The principal mission of the Greek Ombudsman is to mediate between the public administration and citizens, in order to help citizens exercise their rights effectively. The Greek Ombudsman also defends and promotes children's rights, promotes equal treatment and fights discrimination in the public sector based on race or ethnicity, religious or other conviction, disability, age or sexual orientation, promotes and monitors the equal treatment of men and women in matters of employment both in the public and the private sector.

As a mediator, the Greek Ombudsman makes recommendations and proposals to the public administration. The Ombudsman does not impose sanctions or annul illegal actions by the public administration.

II. *Pro bono Opportunities in Greece*

The provision of *pro bono* legal services in Greece is not well-established or widespread. According to the law, the attorneys should always receive fees for the provision of legal services. The exceptions to these principles are very concrete and the applicant who wishes to benefit should provide all the necessary documentation showing the lack of the necessary means to cover the expenses.

However, because of the particular geographic location of Greece and of the numerous migrants/refugees it has been receiving lately, a special niche for legal aid in relation to their rights has been created.

The Marangopoulos Foundation for Human Rights (“MFHR”)¹ offers free legal aid to people (without any discrimination as to race, religion, sex, language, national or social origin) whose fundamental human rights and freedoms have been infringed on and who are unable to pay for legal counsel. MFHR has accepted many different types of cases, including the following:

- (1) Offering legal assistance to refugees and asylum seekers by submitting applications for asylum and going through the procedures involved in determining refugee status in accordance with the provisions of the 1951 Geneva Convention. Although the implementation of Greek law on political asylum is strict, MFHR has managed to achieve a positive outcome for a satisfactory number of cases.
- (2) Supporting detainees and prisoners by providing legal aid and defending them before the court.

¹ <http://www.mfhr.gr/?ln=1>

- (3) Examining the conditions and terms under which detainees and prisoners are being kept, especially in mental hospitals, in addition to taking action to assure that their rights are not being violated.
- (4) Greeks of Northern Epirus have received special attention and assistance concerning their settlement in Greece, residence and work permits, including procedures to obtain Greek citizenship.
- (5) Intervening in cases of deportation wherever necessary and preventing, at the entry check points of the borders, the deportation of foreigners who are in danger of torture or physical and psychological oppression in their own countries.
- (6) Offering assistance to the homeless and those outside of the social security system.
- (7) Assisting individuals to resolve problems with the Greek public authorities by taking the necessary steps.

Moreover, various groups of lawyers have been constituted in an effort to provide help to migrants and refugees and ensure respect of their rights. Indicatively, we can mention the “Group of lawyers for the Rights of Migrants and Refugees” (*Ομάδα Δικηγόρων για τα δικαιώματα προσφύγων και μεταναστών*).²

Finally, recently (in 2010) the General Secretariat for Youth of the Greek State has launched a program called “Youth Legal Aid” aiming to provide free legal aid to socially vulnerable target groups of young citizens. Legal services will be provided by young lawyers (up to 35 years old). The program wishes to serve two purposes (i) to fight against social discrimination often experienced by the youth target groups and (ii) to prompt and support the young lawyers when undertakings similar cases.³

III. Conclusion

In Greece, legal aid and some limited free legal advice is available, but there seems to be no established *pro bono* culture. The particular geographic position of the country, receiving numerous immigrants and refugees, and the recent severe economic crisis have increased the number of applicants requesting legal services free of charge. *Pro bono* organizations promoting various voluntary activities are rather proactive in various fields of the society, but in the field of provision of legal services, there is a lot of margin for improvement.

² <http://omadadikigorwn.blogspot.com/>

³ <http://www.neagenia.gr/frontoffice/portal.asp?cpage=RESOURCE&cresrc=1287&cnode=1>